

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDUARDO JURADO)	
Claimant)	
VS.)	
)	Docket No. 201,482
POKY FEEDERS INC.)	
Respondent)	
AND)	
)	
U.S.F. & G.)	
Insurance Carrier)	

ORDER

Claimant appealed from the preliminary hearing Order of Administrative Law Judge Kenneth S. Johnson dated February 21, 1997, wherein claimant was denied his request for additional medical treatment.

ISSUES

The issues listed by claimant are as follows:

- "1. Based upon the facts contained in the record of this case and the applicable law, claimant submits that the court erred by refusing to provide claimant additional medical treatment.
- "2. That the Administrative Law Judge failed to provide an Order within 5 days pursuant to K.S.A. 44-551.
- "3. That the Administrative Law Judge's failure to issue a Preliminary Order for (120) one hundred and twenty days after the Preliminary Hearing constitutes an abuse of discretion.
- "4. That Claimant's timely motion to the Directors office to have the case removed from the Administrative Law Judge for a decision

by another body should be affirmed and the Order of Administrative Law Judge Johnson be set aside for lack of jurisdiction.

- “5. The Administrative Law Judge exceeded his jurisdiction by failing to timely deny or grant the relief requested at the Preliminary Hearing.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidence contained herein, and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that the Order of Administrative Law Judge Kenneth S. Johnson should be affirmed.

K.S.A. 44-534a allows appeals from preliminary hearings only with regard to the disputed issues of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Appeals Board on appeal from preliminary hearings. Appeals to the Appeals Board are further controlled by K.S.A. 44-551 which limits appeals from preliminary hearings to situations where it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. Claimant argues the Administrative Law Judge exceeded his jurisdiction in delaying the issuance of an order beyond the five-day limitations set forth in K.S.A. 44-534a. The Appeals Board finds the issue regarding the Administrative Law Judge's failure to timely issue an order regarding additional medical is not one listed in K.S.A. 44-534a as appealable to the Appeals Board. Furthermore, the power to grant or deny medical treatment from a preliminary hearing is within the Administrative Law Judge's jurisdiction under K.S.A. 44-534a. As such, claimant's appeal on these issues is dismissed.

Claimant's issues numbered 2, 3, and 5 all deal with the timeliness of the Administrative Law Judge's issuance of this Order. While K.S.A. 44-534a does require that the Order be issued within five days, there is nothing in the statute which denies the Administrative Law Judge jurisdiction should the order be issued at a later time. As such, claimant's appeal on issues 2, 3, and 5 are found to be without merit and are dismissed.

Finally, claimant contends, pursuant to his request under K.S.A. 44-523, entitlement to have this matter assigned to a different administrative body due to the delay in the issuance of the order by the Administrative Law Judge. A preliminary hearing was held October 24, 1996. On January 2, 1997, claimant's attorney wrote the Administrative Law Judge requesting the issuance of an order. A letter sent to the Workers Compensation Director's office on February 17, 1997, requested this matter be assigned to a different administrative law judge. The letter of the claimant to the Director cites no statutory provision

allowing for this reassignment. A review of the Workers Compensation Act does find K.S.A. 44-523 which states in part:

“(c) When all parties have submitted the case to an administrative law judge for an award, the administrative law judge shall issue an award within 30 days. When the award is not entered in 30 days, any party to the action may notify the director that an award is not entered and the director shall assign the matter to an assistant director or to a special administrative law judge who shall enter an award forthwith based on the evidence in the record, or the director, on the director’s own motion, may remove the case from the administrative law judge who has not entered an award within 30 days following submission by the party and assign it to an assistant director or to a special administrative law judge for immediate decision based on the evidence in the record.”

K.S.A. 44-523 deals with final awards which have been submitted to administrative law judges for a decision. There is no indication in that statute of its application to a preliminary hearing which has not been decided within five days as required by K.S.A. 44-534a.

The Appeals Board, in considering the application of K.S.A. 44-523 in past matters, has held that even after a motion to transfer has been made, the administrative law judge retains jurisdiction of the matter until such time as a reassignment is issued by the director’s office. See Reinhart v. Superior Industries Int’l, Docket No. 180,932 (June 24, 1995); see also Reed v. City of Olathe, Docket No. 148,508 (June 1996). Regardless of whether K.S.A. 44-523 applies to preliminary hearings or not, the Administrative Law Judge’s issuance of an order on February 21, 1997, was prior to any action taken by the director. As such, the Appeals Board finds that the Administrative Law Judge retained jurisdiction of this matter. Therefore, the request by claimant that the Order of Administrative Law Judge Johnson be set aside for lack of jurisdiction is denied and the Order of February 21, 1997, remains in full force and effect.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated February 21, 1997 is affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Thomas Fields, Kansas City, KS
P. Kelly Donley, Wichita, KS

Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director